

Docket No. 14-CV7645

United States District Court for the Southern District of New York

Dkt No. 14-CV7645

A# 205-445-670

SUN, Chang Jiu ,
A# 205-445-670

Plaintiff,

v.

ERIC Holder, Attorney General
of the United States;

Lori Scialabba, Deputy Director,
U.S Citizenship and Immigration Services

Susan Raufer, Director,
Newark Asylum Office, U.S. Citizenship and
Immigration Services;

Acting District Director: Michael Borgen
Jurisdiction: New York City Field Office,

Defendants.

Civil Action No. 14CV7645

COMPLAINT FOR WRIT OF MANDAMUS

September 15, 2014

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TO THE HONORABLE COURT:

Plaintiff, **SUN, Chang Jiu**, through undersigned counsel, alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to 8 U.S.C. § 1447, 28 U.S.C. §1331 and 1361, 5 U.S.C. § 701 and 28 U.S.C. §2201 *et. seq.* to redress the deprivation of rights, privileges and immunities secured to Plaintiff to compel Defendants to perform a duty Defendants owe to Plaintiff. Jurisdiction is also conferred by 5 U.S.C. §704.

2. This action is brought to compel Defendants and those acting under them to take action on a Form I-589, Application for Asylum, (hereafter “the Application”) in order for Plaintiff to secure safe haven in the United States. The Application was filed with the USCIS on July 20, 2012 by **my office on behalf of the Plaintiff**.

Mr. Sun was interviewed by an Immigration Officer¹ on August 29, 2014, and we were hopeful that a decision would either be rendered granting Mr. Sun’s application as we believe there were no inconsistencies or referring this case in a timely manner to the asylum court for further review under 8 CFR 208.14.

3. Plaintiff is entitled to expect to have his Application adjudicated in a reasonable period of time.

¹ We believe his name to be Officer Antersack – ZNK190

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4. Defendants, the Department of Homeland Security and U.S. Citizenship and Immigration Services (USCIS), are charged by law with the statutory obligation to adjudicate this Application.

5. Venue is proper under 28 USC §1391(e) because the Plaintiff resides in this district and no real property is involved in this action.

FACTS

6. **SUN, Chang Jiu**, is a native and citizen of China. **He entered the US on a valid visa on February 25, 2012, and thereafter applied for asylum in July of that year.**

7. **SUN, Chang Jiu**, was brutalized in his country of origin, and his religious faith was oppressed. His leg was fractured in detention in China, and he was ordered not to attend any further religious activities of his choosing and or there would be further consequences to bear.

8. His interview was initially scheduled at the NY asylum office as Mr. Sun was residing in Queens, New York; he attended the New York Asylum Office on August 29, 2012, and was told that his case would be transferred to New Jersey Asylum Office as he was now residing in New York City. I believe this is to because to ease the workload for the New York office with respect.

9. After a lengthy delay and repeated requests for an interview, an interview with respect was conducted on August 19, 2013. **Following such**

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we submitted additional information² as requested from the officer³, and this included medical records of this man in this country.

The medical records that were furnished to the asylum office where that of the x-rays that were provided at the interview and of this man's health condition, germane to Cancer and how it impacts his ability to focus on questions presented, to process such questions and the ability to convey his thoughts in a fluid manner.

10.SUN, Chang Jiu, has inquired about the status of his application on a number of occasions. This has been done in person via present counsel on at least three occasions. We have also written to inquire about the status of the application and to request that a decision be given in regards this man's asylum request.

Most of these requests have not been responded to or the responses that have been furnished upon us are with respect boilerplate in nature. Furthermore, a copy of this writ (draft) was served on the New Jersey office in June of this year, and we again asked for a decision to be rendered but have received no reply.

11. It should be known with respect the typical turn-around time for a decision is normally two weeks and when a decision has not been made by the Asylum Office, and they are not seeking additional information/evidence, it is unjust to keep the Plaintiff waiting more than a year for such.

12. Although we are not seeking relief on this instant concern, it should be

² Submitted to the Newark asylum office on August 29, 2013 via FedEx delivery- 8003-3016-2769

³ Form I-72, dated Aug 21, 2013

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noted that this man's initial application for an employment authorization which we believe he was entitled to, was initially denied as he was incorrectly blamed for the delay in the processing of his case. This was because the New York Asylum Office transferred his file to the New Jersey⁴ asylum office.

13. This man's health condition has not improved, and he is still been treated for cancer. If this application for asylum was reviewed and a favorable decision rendered within a reasonable time subsequent to the interview, the possibility of family renunciation may have been possible at this stage. However, this man is extremely anxious not just about his plight in this country and his fear of return to China, but also for the safety for his family in China.

As was relayed to the asylum office in a letter of inquire the slow progress of this man's case, is certainly not aiding in this man's fight and, or recovery.

14. Finally, although we are merely asking for action to be taken in the Asylum Office it should also be noted with respect by the Court, if this man's application is referred to the immigration court, because of delays within the Executive Office of Immigration Review (EOIR) with respect, this man could face, at least one additional year and maybe as much of four years or more in court to await for a final decision.

⁴ Please see attached denial notice

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CLAIMS

17. Defendants have willfully and unreasonably have delayed in and have refused to adjudicate the Application, thereby depriving the Plaintiff of the benefit of possibly gaining safe haven in this country.

This has caused a large degree of emotional distress to this man and his family and may have impacted the treatment/recovery he is receiving for Cancer.

18. Defendants owe Plaintiff a duty to adjudicate the Application within a reasonable time period and have unreasonably failed to perform that duty.

19. Plaintiff has exhausted any administrative remedies that may exist.

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WHEREFORE, Plaintiff prays that the Court:

1. Assume jurisdiction over the case and grant the Plaintiff relief under the terms of 8 CFR 208, or
2. Compel Defendants and those acting under them to perform their duty to adjudicate the Application; and
3. Grant such other and further relief as this Court deems proper under the circumstances; and
4. Grant Attorney's fees and costs of Court to Plaintiff under the Equal Access to Justice Act.

Respectfully submitted this 19th day of September, 2014.

/s/ David A. Bredin

by, David A. Bredin, Esq/Sol.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate procedure 32(a)(7)(B) and (C), I certify that this ‘Writ’ is proportionally spaced, has a typeface of 14 points using Times New Roman typeface, and according to “word” word processor, contains 1,549 words.

Dated: September 19, 2014

Queens, NY

Respectively submitted

/s/ David A. Bredin

by, David A. Bredin, Esq/Sol.

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CERTIFICATE OF SERVICE

I, David A. Bredin, certify that I served a copie(s) of this ‘Writ’ in
hardcopy by priory mail, U.S. postage prepaid and email, on this date to:

U.S. Department of Justice – Office of Immigration

ERIC Holder, Attorney General
of the United States;
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Lori Scialabba, Deputy Director,
U.S Citizenship and Immigration Services
Peter Rodino Federal Building 970 Broad Street
Newark, New Jersey 07102
United States

Susan Raufer, Director,
Newark Asylum Office, U.S. Citizenship and
Immigration Services;
1200 Wall Street West
Lyndhurst, New Jersey 07071

Acting District Director: Michael Borgen
Jurisdiction: New York City Field Office,
Jacob K. Javits Federal Building
26 Federal Plaza, 3rd Floor, Room 3-120
New York, NY 10278

Dated: September 22, 2014

Queens, NY

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Respectively submitted

/s/ David A. Bredin

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